



MEMORANDUM

TO: Heads of Executive Agencies  
General Counsels  
Agency Regulatory Staff

FROM: Thomas M. Sullivan  
Chief Counsel for Advocacy

DATE: May 1, 2003

SUBJECT: Update on Federal Agency Requirements Under  
Executive Order 13272

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As you know, on August 13, 2002, President Bush signed Executive Order (E.O.) 13272 requiring federal agencies to implement polices protecting small business when writing new rules and regulations. The purpose of the Executive Order is to ensure that we work closely together to address small business issues, particularly as they relate to disproportionate regulatory burden, as early as possible in the regulation writing process.

On August 22, 2002 I sent a memorandum alerting the heads of federal agencies to the Executive Order's requirements. Under the Executive Order, all federal agencies were required to submit draft plans to Advocacy last November on how they account for small business in their rulemaking process. Those plans were to incorporate Advocacy's comments and should have been made available to the public by February 13, 2003.

RFA Compliance Guide

The Executive Order also requires Advocacy to notify the heads of federal agencies of the basic requirements of the Regulatory Flexibility Act (RFA). Accordingly, we issued our draft RFA implementation guide for federal agencies on November 13, 2002. After the receipt of comments from federal agencies and congressional staff on the draft guide, Advocacy is now announcing the publication of the final version and its availability to agencies. It contains information on the requirements of the Regulatory Flexibility Act, recommendations for agency compliance, examples of rules promulgated in accordance with the mandates of the RFA, as well as detailed RFA case law information.

The guide is available on our website: <http://www.sba.gov/advo/laws/rfaguide.pdf>. We hope that it will become a useful tool for agencies as they consider the impact of their regulations on small business in compliance with the requirements of the RFA.

### Agency Notification Requirements

Advocacy would like to remind regulatory agencies of their responsibility under the RFA and E.O. 13272 to notify Advocacy of certain rules. Under the RFA, agencies were already required to transmit to Advocacy a copy of any rules which were certified under the RFA, or any initial regulatory flexibility analysis where no such certification was possible and each regulatory flexibility agenda. Section 3(b) of E.O. 13272 now requires agencies to notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities. Such notice is to be provided (i) when the agency submits a draft rule to OIRA under Executive Order 12866, or (ii) if no submission to OIRA is required, (e.g. independent agencies), at a reasonable time prior to publication of the rule by the agency. This requirement took effect on August 13, 2002.

### New E-mail Notification System

To facilitate the submission of these draft rules to Advocacy, we have created a dedicated e-mail address for this purpose. The address is: [notify.advocacy@sba.gov](mailto:notify.advocacy@sba.gov). Agencies should utilize this address as the official notification to Advocacy of draft rules and economic analyses listed above. If this address is utilized, a paper copy will no longer need to be sent to Advocacy. This will enable us to track agency compliance with the notice requirements of the RFA and E.O. 13272 and to report annually to Congress and the President on such compliance.

### Upcoming RFA Training

Finally, under E.O. 13272, Advocacy is required to train all federal regulatory agencies on the requirements of the RFA. We are in the final stages of hiring a contractor for this purpose and will begin training in June. Advocacy will be contacting your office, if it has not already done so, to schedule this mandatory training for your regulatory staff. If you would like to contact us regarding scheduling, please feel free to do so. We look forward to continuing our productive working relationship with your agency as we carry out the mission of the President and Congress on behalf of small business.

If you have any questions or concerns on our new RFA compliance guide, the Executive Order or the RFA, our new e-mail notification system, or the upcoming RFA training sessions, please contact Claudia Rayford Rodgers, Senior Counsel, at 202-205-6804 or at [claudia.rayford@sba.gov](mailto:claudia.rayford@sba.gov).